

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;  
William L. Massey, Linda Breathitt,  
Pat Wood, III and Nora Mead Brownell.

GridSouth Transco, LLC  
Carolina Power & Light Company  
Duke Energy Corporation  
South Carolina Electric & Gas Company

Docket Nos. RT01-74-002 and  
RT01-74-003

ORDER ON COMPLIANCE FILING AND STATUS REPORT

(Issued July 12, 2001)

On May 14, 2001, in Docket No. RT01-74-002, Carolina Power & Light Company (CP&L), Duke Energy Corporation (Duke) and South Carolina Electric & Gas Company (SCE&G) (referred to collectively as "Applicants") submitted a filing to comply with the Commission's March 14, 2001 order (March 14 order),<sup>1</sup> which granted provisional Regional Transmission Organization (RTO) status to GridSouth Transco, LLC (GridSouth). In addition, the filing contains GridSouth's Generator Interconnection Procedures, Congestion Management Procedures, a Reliability Operating Agreement between GridSouth and each Applicant and a status report on the Applicants' efforts to expand the scope of GridSouth. On June 11, 2001, in Docket No. RT01-74-003, the Applicants submitted a revised pro forma tariff sheet in compliance with the order on rehearing.<sup>2</sup>

The Commission finds that, with the modifications directed in this order, the Compliance Filing, as well as the Generator Interconnection and Congestion Management Procedures, are acceptable. Further, we accept the filing in Docket No. RT01-74-003. However, as discussed in the order, we reject the Reliability Operating Agreements as premature because the GridSouth Board has not yet been installed and, therefore, the agreements do not reflect the independence from market participants needed for compliance with Order No. 2000. Further, as discussed in the order, because of our concerns regarding the current independence of GridSouth, we direct the independent GridSouth Board, and not Applicants, to submit a revised compliance filing within 90 days.

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<sup>1</sup>Carolina Power & Light Company, *et al.*, 94 FERC ¶ 61,273, on rehearing, 95 FERC ¶ 61,282 (2001).

<sup>2</sup>95 FERC ¶ 61,282, at 61,992.

The Commission has been attempting to facilitate the development of large, regional transmission organizations reflecting natural markets since we issued Order No. 2000. We favor the development of one RTO for the Northeast, one RTO for the Midwest, one RTO for the Southeast and one RTO for the West. Through their independence from market participants, RTOs can ensure truly non-discriminatory transmission service and will instill confidence in the market that will support the billions of dollars of capital investment in generation and demand side projects necessary to support a robust, reliable and competitive electricity marketplace. RTOs are the platform upon which our expectations of the substantial generation cost savings to American customers are based.

While there will be "start up" costs in forming a larger RTO, over the longer term, large RTOs will foster market development, will provide increased reliability, and will result in lower wholesale electricity prices. However, these savings will be delayed, perhaps significantly, if RTOs are permitted to develop incompatible structures and systems, or if we approve RTOs that do not encompass wholesale market trading patterns. Accordingly, we today direct the parties in the Northeast and Southeast to mediation, under an expedited schedule.

#### I. Background

On October 16, 2000, Applicants submitted a compliance filing to comply with Order No. 2000. They requested the Commission's approval for the formation of an independent, for-profit transmission company or "transco." Applicants submitted a GridSouth Open Access Transmission Tariff (Tariff or OATT), pursuant to which GridSouth will provide open access transmission and ancillary services. The compliance filing included a GridSouth Transmission Operating Agreement (Operating Agreement), pursuant to which Applicants will transfer functional control of their transmission facilities to GridSouth. Applicants also tendered a Limited Liability Company Agreement of GridSouth Transco, LLC (LLC Agreement) that will establish GridSouth as a limited liability company under Delaware law, and includes the governance provisions for the proposed RTO.

The March 14 order provisionally accepted Applicants' compliance filing and found that their proposal, as modified by the order, would create a viable, stand-alone transmission business that complies with Order No. 2000. The March 14 order required Applicants to revise various provisions of the OATT and other corporate documents and to submit a revised compliance filing by May 14, 2001. The March 14 order found that the GridSouth proposal, "while not ideal with respect to scope and configuration, represents a good first step toward the creation of an RTO in the Southeast region and can serve as a platform for the formation of a larger RTO in the Southeast."<sup>3</sup> The March 14 order also directed Applicants to meet with representatives of Santee Cooper to attempt to reach agreement on the latter's participation in the GridSouth RTO. Further, the order required Applicants to submit, by

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<sup>3</sup>March 14 order, 94 FERC at 61,993.

May 14, 2001, a status report regarding (1) efforts to expand the scope and configuration of the RTO and (2) interregional coordination discussions with neighboring transmission entities.

## II. Overview of the Applicants' First Supplemental Filing

On May 14, 2001, Applicants submitted a "First Supplemental Filing" to comply with the March 14 order. The filing includes the required status report and revisions to the OATT, Operating Agreement and LLC Agreement to address specific issues identified in the March 14 order. The filing also includes, pursuant to section 205 of the Federal Power Act (FPA), proposed changes to the Operating Agreement, LLC Agreement and Master Definition List that were not required by the March 14 order. The filing does not include proposed rates or changes to rate terms, and Applicants state that a rate proposal will be filed separately no later than 60 days prior to the date GridSouth commences operation (the "Independence Date").

In addition, the filing contains GridSouth's congestion management procedures and charges (attachment K of the GridSouth OATT). This consists of an initial plan that will be implemented on the first day of GridSouth's operations, and a process for developing a long-term, market-based congestion management plan. Applicants' filing includes Generator Interconnection Procedures that set forth the terms and procedures pursuant to which GridSouth will evaluate requests for the interconnection of new generation (or increases in capacity of existing generators) to the transmission facilities controlled by GridSouth (attachment L of the GridSouth OATT). Applicants also submitted a Reliability Operating Agreement between GridSouth and each of the three Applicants, which provides for the coordination of operations between GridSouth and Applicants' interconnected generation facilities.

## III. Notice of Filing and Interventions, Comments and Protests

Notice of the Supplemental Filing, Docket No. RT01-74-002, was published in the Federal Register, 66 Fed. Reg. 28,455 (2001), with comments, protests, and interventions due on or before June 15, 2001, and by subsequent notice extended to June 18, 2001. The intervenors and commentors are listed in Appendix A. A separate notice of filing was issued for the Status Report contained within the Supplemental Filing, with comments, protests, and interventions due on or before June 1, 2001. The intervenors and commentors are listed in Appendix B. Notice of the Applicants' June 11, 2001 filing, Docket No. RT01-74-003 was published in the Federal Register, 66 Fed. Reg. 33,064 (2001), with comments, protests, and interventions due on or before June 22, 2001. The intervenors and commentors are listed in Appendix C.

On July 3, 2001, Applicants filed a response to the comments and protests. On July 5, 2001, Electricities, Piedmont and Cities of Orangeburg and Seneca, SC filed jointly a supplemental to their protest.

#### IV. Discussion

##### A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), the timely, unopposed motion to intervene serves to make Alcoa a party to the proceedings in Docket Nos. RT01-74-002 and RT01-74-003. Other commentors and protestors had previously intervened in Docket No. RT01-74-001, which serves to make them parties to the current proceedings.

Applicants' response is an impermissible answer to a protest that is prohibited by 18 C.F.R. § 385.213(a)(2) (2000). Accordingly, Applicants' answer is rejected. Further, we reject the supplemental protest filed jointly by intervenors because it does not provide any information that will assist us in deciding the issues in this proceeding.

##### B. Independence

In addition to protesting specific provisions of the compliance filing, Joint Protestors and Calpine complain that the overall nature of the proposed agreements are self-serving to Applicants. After protesting various provisions of the filing that it believes benefit Applicants to the detriment of other participants (discussed later in the order), Calpine states that "sufficient evidence exists in the filed documents to demonstrate that the Applicants do not possess either the ability to consider the perspectives of all stakeholder groups, or the inclination to do so."<sup>4</sup> Joint Protestors express similar sentiments. They also note that the Applicants selected a Duke officer and Duke's representative on the GridSouth Management Committee as Chief Operating Officer (COO) of the RTO. They note that, while technically not barred under the LLC Agreement from serving as the COO, his transfer to GridSouth creates a strong perception that the proposed GridSouth RTO is merely an extension of its three founding members.<sup>5</sup>

Based on our review of the compliance filing, we have concerns regarding GridSouth's independence. As discussed later, we find that the proposed Reliability Operating Agreements between GridSouth and each of the Applicants do not reflect the independence from market participants needed for compliance with Order No. 2000, given that an independent GridSouth Board

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<sup>4</sup>Calpine at 7-8.

<sup>5</sup>Joint Protestors at 49-50.

is not in place. Further, while we are accepting the other components of the Supplemental Compliance Filing, such as the GIPs and the Congestion Management Procedures, we have required substantial modifications to provisions that would appear to favor the participating transmission owners, *i.e.*, Applicants. Although we previously accepted Applicants' proposal on governance and independence, we are concerned that certain proposals that are central to independence, including the creation of an independent Board and a Stakeholder Advisory Committee, have not yet been implemented. As a result, Applicants continue to make important policy decisions that will bind the RTO for the future. We are mindful that Applicants are forging ahead to meet the December 15, 2001 start-up date. Yet, we are concerned that the GridSouth RTO is not currently independent of Applicants.

Binding decisions should be made by the independent GridSouth Board or through a full stakeholder process to achieve consensus, not by Applicants acting unilaterally. As we discussed in GridFlorida, LLC, 94 FERC ¶ 61,363 at 62,325 (2001), prior to installation of the independent Board, the RTO may not spend funds on activities that are significant to the future operation of the RTO and may only expend funds on certain non-policy related matters (included but not limited to such matters as leases for office space and employee benefit plans). The GridSouth Applicants represented that they would similarly limit their spending prior to the seating of the independent Board.<sup>6</sup>

Accordingly, we direct that the independent GridSouth Board be seated in a timely manner. Moreover, we direct the independent Board, and not Applicants, to submit a revised compliance filing within 90 days.

Our concerns about the Applicants' making significant decisions prior to the installation of the Board is compounded by their selecting one of their own officers as the GridSouth COO. We agree with the protestors that Applicants' unilateral selection of the current COO, a Duke officer, compromises the independence (and at a minimum the appearance of independence) of the RTO. We direct that the current COO be removed and the independent Board choose the GridSouth COO. However, the independent Board is not precluded from selecting the same Duke officer as the GridSouth COO.

C. Status Report on Scope and Configuration

1. The May 14, 2001 Status Report

As required by the March 14 order, on May 14, 2001, Applicants submitted a status report on their discussions with other transmission entities in the Southeast concerning efforts to expand the scope

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<sup>6</sup>See Order on rehearing, 95 FERC ¶ 61,282 at 61,997.

of GridSouth and the progress made in addressing inter-regional and seams issues.<sup>7</sup> Applicants state that they held discussions with Santee Cooper, Southern Companies (Southern), Tennessee Valley Authority (TVA), the Southeastern Power Authority (SEPA), and the Georgia Transmission Company (GTC). According to the report, Applicants have not at this time reached any agreements to include other transmission owners as GridSouth members.

Applicants state that they held numerous meetings with Santee Cooper, initially facilitated by Commission staff, to negotiate an agreement whereby Santee Cooper would transfer control of numerous transmission functions to GridSouth (including joint tariff administration, coordinated ATC calculations, elimination of pancaked rates and joint intra-regional planning), while respecting Santee Coopers' legal limitations as a public power entity. Applicants state that they exchanged draft proposals but have not been able to reach an agreement. According to Applicants, they and Santee Cooper disagree over two key issues: (1) whether Santee Cooper should bear a proportional share of GridSouth start-up and operating costs; and (2) the degree to which GridSouth should have final decisional authority over the combined systems. Applicants ask that the Commission affirm their position that Santee Cooper should participate in GridSouth "on a basis comparable to the Applicants, except to the extent that Santee Cooper faces verifiable legal obstacles to doing so," and that Santee Cooper should pay a proportional share of start-up costs.<sup>8</sup>

According to the report, Applicants met with representatives of Southern and focused on whether Southern could join GridSouth as an equity member or contract for GridSouth to perform RTO services for the Southern transmission system. Applicants state that Southern expressed reservations about certain aspects of the GridSouth model and, after several discussions, Southern informed Applicants that it had decided to file with the Commission a new RTO proposal that did not contemplate Southern joining GridSouth. As an alternative, Southern proposed to initiate discussions to develop a "virtual" RTO for the Southeast, and Applicants state that they have declined to participate in such discussions pending further guidance from the Commission. Applicants state that they also met with GTC, but were subsequently informed that GTC planned to join Southern's proposal for an RTO.

According to the report, Applicants have met with TVA and "are encouraged by TVA's initial positive response."<sup>9</sup> They state that TVA plans to send a "technical team" to obtain more details on TVA's potential participation, with a management-level meeting to follow. The report indicates that Applicants also held "preliminary, high level discussions" with SEPA, and that SEPA has asked

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<sup>7</sup>The Status Report consists of a description of Applicants' discussions with transmission owners (Attachment A to the May 14, 2001 Transmittal Letter) and an analysis of the discussions (May 14, 2001 Transmittal Letter, at pp. 4-13).

<sup>8</sup>May 14, 2001, GridSouth Transmittal Letter, at p. 6-7 (emphasis in original).

<sup>9</sup>Id., at 12.

Applicants to provide information to assist it in evaluating whether to become a member of GridSouth or a stakeholder. Applicants plan to respond to SEPA within two months and then follow up with additional meetings.

## 2. Comments and Protests

SC Consumer Advocate comments that Applicants' discussions to expand GridSouth seem to be making little, if any, progress. It believes that "stronger persuasion, if not outright mandate, by the [Commission] may be necessary to get progress toward making GridSouth more inclusive."<sup>10</sup>

NHEC, NCEMC, Central and Carolina Municipal Entities, all public power entities, echo the same theme that the status report shows that Applicants' efforts to secure the participation of other transmission owners have failed to produce any progress towards achieving the goal of a Southeast-wide RTO. They contend that the report reveals "deep differences" between Applicants and Santee Cooper, and Applicants and Southern Companies, over their participation in GridSouth. These public power entities also share in the belief that Applicants have not demonstrated an ability to successfully expand through bilateral negotiation, and that future expansion will not occur without Commission intervention. They propose various actions that the Commission could take to "move the ball forward" toward the attainment of a Southeast RTO, including: (1) withdrawing provisional approval of the GridSouth RTO until a commitment from new members is secured; (2) deferring the December 15, 2001 start-up date until further expansion occurs; (3) directing the Chief Judge to convene an expedited collaborative process; or (4) convening a technical conference to explore how GridSouth could revise its business model to attract additional participants.

Calpine, states that it is "encouraged" by the prospect of an expanded GridSouth RTO that encompasses all major transmission owners in the Southeast. It expresses concern about references in the status report to a Memorandum of Understanding (MOU) that would create a forum to address seams issues between Applicants, Southern and other regional transmission owners. Calpine believes that MOUs and seams agreements create delay and balkanization of markets, and therefore should not substitute for the creation of a single regional RTO from the inception.

Santee Cooper comments that the draft proposals prepared by it and Applicants show common ground on a number of Santee Coopers' transmission functions that could be turned over to GridSouth pursuant to a seams agreement. However, it objects to Applicants' request that the Commission express its "expectation" that Santee Cooper must participate in GridSouth on a basis that is "fully comparable" to Applicants, and pay RTO operating and start-up costs on the same basis as Applicants. Santee Cooper states that it is willing to negotiate a fee to compensate GridSouth commensurate to the services provided. Further, Santee Cooper insists that it entered the negotiations

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<sup>10</sup>SC Consumer Advocate Comments at 7.

with the understanding that, while it did not support GridSouth's business model, it would nonetheless attempt to negotiate an agreement to turn over certain functions to the RTO to provide seamless, one-stop shopping for transmission customers using the combined systems. Santee Cooper states its understanding that Applicants are unwilling to continue negotiations until the Commission affirms Applicants' positions, and thus concludes that the negotiations appear to have reached an impasse. Santee Cooper states that, while still willing to negotiate a seams agreement that would preserve its status as a public power entity, it is also reviewing other options including discussions with Southern to establish an RTO.<sup>11</sup>

### 3. Commission Conclusion

The Commission recognizes the considerable efforts of Applicants to meet with other transmission owners in the region. We understand that the two-month window, from the issuance of the March 14 order to the May 14 reporting deadline, was a relatively short period of time for Applicants to enter into final agreements with other transmission owners. Nor do we find fault with Applicants where other transmission owners have chosen to take other approaches to RTO formation rather than pursuing membership in GridSouth. However, we are disappointed by the lack of progress Applicants have made in expanding the RTO's scope through the inclusion of additional members in GridSouth. It appears that Applicants have, to date, been unsuccessful in engaging in any fruitful discussions with other transmission-owning entities in the region.

Further, we agree with Calpine's observation that the initial formation of a single Southeast RTO is preferable to the formation of multiple RTOs in the same region that coordinate through an umbrella organization or seams agreements.<sup>12</sup> There is no reason at this early stage of development to work towards second-best solutions without having made sufficient efforts to achieve the goal of a single RTO within the region.

In order to successfully encompass the natural market for bulk power in the Southeast, it is necessary that the Southeast transmission owners combine to form a single RTO. To facilitate this, we are issuing concurrent with this order, a separate order that directs the parties in this proceeding and the parties in the proceedings in Docket Nos. RT01-77-000 (Southern), RT01-34-000 (Southwest Power Pool, Inc.) and RT01-75-000 (Entergy), to participate in settlement discussions for 45 days

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<sup>11</sup>In a June 20, 2001 status report on its efforts to develop an RTO, in Docket No. RT01-77-000, Southern provided a copy of an executed Memorandum of Understanding between it and Santee Cooper. The MOU provides that Santee Cooper will participate with Southern and other regional transmission owners in the development of an RTO proposal known as "SeTrans."

<sup>12</sup>See Southern Companies, 9 FERC ¶ 61,\_\_\_ (2001) (issued concurrent with this order), which emphasizes the inefficiency of establishing two or more RTOs in the Southeast.



before a mediator and appropriate consultants to assist and provide advice during the mediation.<sup>13</sup> The order directing mediation requires the mediator to file a report within 10 days after the 45-day period, which includes an outline of the proposal to create a single Southeastern RTO, milestones for completion of intermediate steps and a deadline for submitting the joint proposal. We intend to review the report and may issue a subsequent order.

We encourage the state commissions to participate in these efforts. We believe their participation will further the resolution of this matter. Likewise, we encourage (but do not require) parties in the proceeding in Docket No. RT01-67-000 (GridFlorida LLC), as well as SEPA and TVA, to participate in the discussions.

With regard to the issues raised by Applicants regarding their negotiations with Santee Cooper, we are mindful of the tension between the public power entity's need not to overstep its legal limitations and Applicants' responsibility to develop a fully-independent system operator consistent with Order No. 2000. In Order No. 2000, after exploring this tension, the Commission stated that it would examine each RTO proposal as to whether it provides public power and cooperatives with flexibility to join without jeopardizing their tax or mortgage status.<sup>14</sup> We then noted that "the offered solutions must be consistent with the minimum functions and characteristics outlined in the Final Rule."<sup>15</sup>

However, resolution of this issue is best left to negotiations between the parties. This is a delicate matter that must be decided in the first instance by the parties. Accordingly, we expect these issues in GridSouth and similarly in the Southeast region to be addressed in the settlement discussions before the mediator relating to the formation of a single RTO in the Southeast, and to be addressed in the mediator's report.

#### D. Generator Interconnection Procedures (GIP)

##### 1. Applicants' Proposal

According to Applicants, the proposed GIPs are modeled after other procedures approved by the Commission, and will be applied on a non-discriminatory basis to all generating facilities, whether owned by third parties or transmission owners and their affiliates. They state that the GIPs will apply to requests for new generation and increases in capacity of existing generation, and will apply to generators that will be interconnected with either the GridSouth transmission system or to distribution systems if transmission service from the generator will be provided under the GridSouth OATT.

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<sup>13</sup>See order in Docket No. RT01-100-000, issued concurrent with this order.

<sup>14</sup>See Order No. 2000, at page 31,201.

<sup>15</sup>Id.

Under the GIPS, an interconnection customer initiates the process by submitting an Interconnection Request (IR) in the form set out in Appendix L-1 to the OATT, which requires certain basic information and a \$10,000 prepayment that GridSouth will apply to the cost of preparing the Interconnection Impact Study (Impact Study). The customer's position in the queue is determined on the date and time of the customer's submission of a complete IR. GridSouth will post on its OASIS information regarding the status of pending IRs.

Within 15 days of its receipt of a completed IR, GridSouth must provide to the customer and the affected transmission owner an Interconnection Impact Study Agreement defining the scope of the proposed study, an estimate of the study costs and time for completion of the study. The customer then has 15 days to execute the Impact Study Agreement and provide required data. Under the GIPs, GridSouth will use due diligence to complete the Impact Study within 60 days. Applicants state that GridSouth will coordinate the study, and transmission owners will be compensated for their costs, if any, in contributing to the preparation of the Impact Study.

Under the GIPs, upon completion of the Impact Study, GridSouth will provide the customer and the affected transmission owner with an Interconnection Facilities Study Agreement, which provides that GridSouth will conduct and coordinate an engineering study to determine the modifications to the transmission system that are necessary to interconnect the proposed generator to the transmission system. The agreement defines the scope of the Interconnection Facilities Study (Facilities Study) and provides cost estimates, time for completion and any additional information to be provided by the customer. Under Applicants' proposal, interconnection customers must execute the Facilities Study Agreement and submit an additional prepayment of \$50,000 within 21 days, or the IR will be deemed withdrawn. The GIPs provide that GridSouth, in coordination with affected transmission owners, will use due diligence to complete the Facilities Study within 90 days after receipt of the Facilities Study Agreement.

The GIPs allow for the early initiation of interconnection activities pursuant to a letter agreement. Further, GridSouth will tender a Facility Interconnection and Operation Agreement (Interconnection Agreement) to the customer no later than 30 days after it provides the completed Facilities Study to the customer. If the customer wishes to go forward with the project, it then has 90 days to execute the Interconnection Agreement or request that GridSouth file an unexecuted agreement with the Commission.

## 2. Intervenors' Comments and Discussion

### a. Study process

#### i. transmission owner involvement in study process

Section 3.1 of the GIPs provides that, upon receipt of a complete IR and \$10,000 prepayment, GridSouth "shall provide to the Interconnection Customer and the affected Transmission Owner(s) an agreement providing for [GridSouth] in coordination with the affected Transmission Owner(s) to conduct an evaluation of the impact of the interconnection on the Transmission System." Similarly, section 4.2 states that GridSouth will coordinate with affected transmission owners in conducting a Facilities Study, and the GIPs Preamble makes clear that GridSouth will reimburse the transmission owners' "reasonable costs for performing such tasks." Related, Section 2.03(a)(v) of the Operating Agreement provides that GridSouth shall direct and supervise "services including . . . together with the Participants, entering into interconnection agreements for new generators to be connected with transmission facilities within GridSouth's Transmission System; establishing the terms and operating requirements for interconnected generators; and filing interconnection agreements with FERC."

Calpine, SC Consumer Advocate and CUCA comment that, while GridSouth will coordinate interconnection studies, it is clear that the transmission owners will perform the studies. They contend that the proposed GIPs are biased since they would allow the transmission owners (or their affiliated generators) that will compete with new generation to evaluate the interconnection needs of their competitors. SC Consumer Advocate argues that new generators will be at a financial disadvantage since they must pay for studies, while the transmission owners or their affiliates may rely on transmission system planning studies prepared in the normal transmission planning process. CUCA proposes that the Commission set a date by which GridSouth must assume sole responsibility for interconnection studies, and to direct Applicants to provide GridSouth their past and present interconnection-related studies and supporting workpapers. Calpine argues that GridSouth must provide one-stop shopping for all transmission services, and the Applicants' role should be limited to providing technical support for evaluation of interconnection studies. It asks that the Commission direct Applicants to revise Section 2.03(a)(v) of the Operating Agreement to reflect this limited role.

We agree that, as proposed, transmission owners are overly-involved in the generation interconnection process. We note that Sections 3.1 and 4.2 of the proposed procedures contemplate the tendering of a contract for study agreements to both the interconnection customer and the affected transmission owner. Further, a transmission owner affected by a proposed interconnection and designated as GridSouth's agent would be responsible for all cost estimates and construction times required by Impact Studies and Facilities Studies. Section 2.03(a)(v) of the Operating Agreement appears to contemplate transmission owners negotiating the terms and conditions of Operating Agreements.

We are concerned that even the perception that the proposed process is biased may be a deterrent to expansion or increased participation in the regional generation market. The Commission concludes that efficient decision-making on investments in transmission facilities requires that the entire

interconnection process must be under the decisional control of GridSouth.<sup>16</sup> The RTO must be responsible for all aspects of the interconnection process, and interconnection customers should deal with and sign study and interconnection agreements with GridSouth alone. To the extent that GridSouth requires the expertise and services of the transmission owners or others in providing interconnection service, GridSouth may enter into appropriate contracts with such entities. The GridSouth Board must revise the GIPs and Section 2.03(a)(v) of the Operating Agreement to reflect this direction.

ii. cost of additional studies

Section 3.1 of the GIPs provides that the interconnection customer shall pay the entire cost of completing an Impact Study "including any additional studies that are necessitated by higher queued Interconnection Customers losing their queue priority or by material changes in the configuration or operation of the Transmission Provider's Transmission System or neighboring transmission systems." Section 4.1 includes similar language regarding the cost of completing Facilities Studies. Calpine argues that, consistent with Virginia Electric and Power Company, 93 FERC ¶ 61,307 at 62,052 (2000) (VEPCO), a customer's cost responsibility for further studies should be limited up until the time that the customer executes an interconnection agreement or directs the transmission provider to file such an agreement on an unexecuted basis.

The addition of such a provision would provide greater certainty for interconnection customers, and is consistent with language that we have accepted previously. Accordingly, the GridSouth Board should revise the GIPs to include a provision that limits a customer's cost responsibility for further studies after the customer executes an agreement or asks GridSouth to file an unexecuted agreement.

iii. enhanced studies

Dynegy requests that the Commission direct Applicants to revise the GIPS, consistent with Southern Companies Services, Inc., 95 FERC ¶ 61,307, at 62,049-050 (2001) (Southern), to allow interconnection customers the option to request further studies to identify appropriate transmission system upgrades and their associated costs regarding the potential deliverability of their planned generation facilities.

Southern recognized that interconnecting generators need timely information regarding the potential deliverability of their plants, and found that it is reasonable to allow generators to request an enhanced study (at their cost) to specify that the resource will sink at a specific interface with another control area. We direct GridSouth to modify the GIPs consistent with Southern, to incorporate a

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<sup>16</sup>See PJM Interconnection, L.L.C., 9 FERC ¶ 61,\_\_\_\_, mimeo at \_\_ (2001).

provision specifying that customers may request further studies to identify appropriate transmission system upgrades and their associated costs. We caution, as we did in Southern, that a request for an enhanced study does not confer any rights to transmission service, nor is it a guarantee of the upgrades that may be required if the generator subsequently requests transmission service.

b. On-site generating facilities

AF&PA comments that the proposed GIPs do not distinguish between merchant generation and customer-owned, on-site generation facilities (e.g., qualifying cogeneration facilities). It contends that the GIPs should be revised to provide a streamlined process (that eliminates the various fees and studies) for on-site generation facilities that seek to connect to the transmission grid because such facilities supply additional energy resources in an efficient and "environmentally friendly" manner while displacing electric utilities' needs to generate or purchase such power. AF&PA also contends that industrial generation should not be subject to the RTOs' reliability control, such as redispatch and maintenance coordination, through reliability or interconnection agreements, because such control can disrupt or damage industrial production or process equipment, and have other adverse impacts.

We note that Section 1.5 of the GIPs provides that GridSouth may develop streamlined processes for small interconnection requests of 20 MW or less. This provision would likely apply to many on-site facilities. Further, we encourage GridSouth to consider other specific provisions that take into consideration the differing circumstances of on-site transmission, and the benefits that they have to offer.

c. Queue Priority

Section 2.2 of the GIPs provides that, if an interconnection customer changes any of the information provided in its Interconnection Request and GridSouth determines that such changes "materially affect" the proposed interconnection, the Interconnection Request will be considered withdrawn and the customer will lose its queue priority. AF&PA contends that the GIPs should provide a clear standard as to which changes will be deemed "material" and require GridSouth to provide an explanation why it determined that a particular change was material.

The Commission agrees that interconnection customers need some degree of certainty whether proposed changes to an interconnection request will impact the project's queue position. Faced with a similar issue in GridFlorida, LLC, 94 FERC ¶ 61,363 at 62,345 (2001), we directed the RTO to revise its interconnection procedures to allow an interconnection customer to make a written request that the RTO state whether a modification of an Interconnection Request would materially affect the proposed interconnection and thus change the queue priority of the project. We direct GridSouth to revise the GIPs consistent with GridFlorida.

d. Interconnection Agreements

i. time for filing executed Interconnection Agreements

Section 6.1 of the GIPs states that GridSouth will file an unexecuted Interconnection Agreement with the Commission within 30 days of receiving a request to do so by the interconnection customer. Calpine asks that the provision be amended to require that GridSouth also file executed agreements with the Commission within 30 days of a request to do so. It explains that acceptance for filing of an Interconnection Agreement is often required by lenders before they will release funds, and an RTO could stall a generation project by delaying such filing.

Calpine's explanation is reasonable and should not be any burden on GridSouth. Accordingly, we direct GridSouth to amend Section 6.1 to state that it will file either an executed or unexecuted Interconnection Agreement within 30 days of a request to do so by the interconnection customer.

ii. treatment of existing Interconnection Agreements

Calpine comments that the filing does not address the treatment of existing Interconnection Agreements. It proposes that generators should be offered an election to either continue their current agreement or request to renegotiate the contract pursuant to GridSouth's new GIPs and model Interconnection Agreement.

The Commission intends, in the near future, to evaluate the importance of standardizing generation interconnection procedures. We will consider all conversion issues as part of this evaluation.

e. Credits for Network Upgrades

i. types of upgrades that are subject to the credit

Section 7.3 of the GIPs provides that an interconnection customer "shall be entitled to a credit, in an amount equal to the cost of the portion of the Interconnection Facilities that are Network Upgrades which are necessary to remove overloads (but not those which are intended to remedy short-circuit or stability problems), which may be applied against: that portion of the charges for Wheel-Out Transmission Transactions . . . that is allocated . . . to the Transmission Owner that is the owner of such Network Upgrades." Dynegy and Calpine protest that Section 7.3 is inconsistent with Commission precedent that makes clear that all network upgrades, and not just those necessary to remove overloads, should be credited to the interconnection customer that funded the upgrades.

In Consumers Energy Company,<sup>17</sup> we clarified that our policy regarding credits for network upgrades associated with the interconnection of generation facilities "has been, and continues to be, that all network upgrade costs . . . including those necessary to remedy short-circuit and stability problems, should be credited back to the customer that funded the upgrades once delivery service begins." GridSouth should modify Section 7.3 consistent with Consumers.

ii. transmission services to which the credits apply

Section 7.3 states that customers can apply transmission credits to rates and charges for "Wheel-Out Transmission Transactions" but not to Network Service, Wheel-Within Transactions or Intrazonal Transactions. Applicants explain that this provision is based on their determination that credits should be offered only where there is incremental transmission revenue against which to apply the credits.<sup>18</sup> Thus, they propose to limit application of the credits to wheel-out service because that is the only currently offered transmission service in which the incremental revenues from the service accrue to the transmission owner that is obligated to give the credit. According to Applicants, once GridSouth transmission rates are no longer based on pricing zones, interconnection customers can also apply the credit to charges for wheel-within (network or point-to-point) transactions.

Calpine and Joint Protestors claim that Section 7.3 inappropriately limits transmission credits to wheel-out service. They contend that credits should apply equally to internal transmission services because network upgrades will benefit the RTO transmission grid as a whole, enhancing the ability to deliver power throughout GridSouth. They argue that the application of credits only to incremental revenues is illogical and inequitable, and intended to protect Applicants from losing revenues. Further, Joint Protestors note that Applicants acknowledge that wheel-within transactions (among GridSouth zones) would generate incremental revenues, but decline to have the credits apply to such transactions because the transmission owner in whose pricing zone the transaction sinks (who would receive the revenue) is different than the transmission owner in whose zone the New Generation is located. They contend that this obstacle could be overcome by designing a system to transfer payments among the rate zones so that the credits could be provided and the appropriate transmission owner assessed the cost.

We find that Applicants' proposal to limit the application of credits to wheel-out service is unacceptable. In American Electric Power Service Corporation,<sup>19</sup> we rejected a similar argument that

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<sup>17</sup>95 FERC ¶ 61,233, at 61,804 (2001). See also Duke Energy Corporation, 95 FERC ¶ 61,279 (2001).

<sup>18</sup>May 14, 2001 Transmittal Letter at 31.

<sup>19</sup>91 FERC ¶ 61,308 at 62,051-52 (2000), order on reh'g, 94 FERC ¶ 61,166 (2001) (AEP).

credits should not apply to network service because AEP would not experience any incremental increase in transmission revenues. The Commission explained that:

In Entergy, [91 FERC at 61,560,] the Commission held that payment for these types of upgrades entitles the generator to credits against future transmission charges. No distinction was made between point-to-point and network transmission service and AEP has failed to justify why such a distinction should be made here. In any event, . . . once transmission begins, AEP is limited to charging the higher of the expansion cost of these upgrades or an embedded cost rate which has the expansion cost of these upgrades rolled-in. This policy applies to both point-to-point and network service.[<sup>20</sup>]

Our ruling in AEP applies in the RTO-context, as well.<sup>21</sup> The up front payment by the generator followed by crediting is a financing/timing issue. Thus, we reject Applicants' proposal that is based on their determination that credits should be offered only where there is incremental transmission revenue against which to apply the credits. Rather, crediting in GridSouth should apply to all transmission services.

When the new generator is located in one GridSouth control area and the load in another, the transmission owner on whose system the interconnection costs were incurred is responsible for the credit. For example, if the generator is interconnected on Duke's system and the load is on CP&L's system, Duke should be granting the transmission credit. In this example, GridSouth should return transmission revenues to CP&L in the amount that would be paid without the credit, and offset the amount of revenues Duke would receive for transmission services provided on its system by the amount of the credit due. In effect, Duke would pay the credit to CP&L on behalf of the generator.

GridSouth should revise Section 7.3 pursuant to this direction.

#### E. Congestion Management Procedures

##### 1. Applicants' Proposal

Applicants' congestion management procedures describe GridSouth's interim congestion management approach, and its interaction with Must-Run units, which will become effective on the initial date of GridSouth's operations. They also describe the process under which GridSouth will develop its long-term, market-based approach to congestion management and a real-time energy balancing market.

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<sup>20</sup>Id.

<sup>21</sup>See GridFlorida LLC, 94 FERC ¶ 61,363 at 62,346 (requiring crediting consistent with AEP).



a. Initial procedures

Applicants state that the initial congestion management procedures will be in place on the first day of GridSouth's operations. They assert that under this approach, all generation owners participating in GridSouth are required, among other things, to start-up or shut down certain generating units when requested to do so by GridSouth in order to ensure that day ahead schedules and forecasted load can be served reliably. GridSouth would only take such action after it has taken all other applicable actions to relieve the reliability problem.

According to the proposal, GridSouth will compensate generation owners for any energy provided as a result of a start-up instruction at cost-based rates. Applicants state that start-up costs will be recovered in one of two ways. First, owners of Must-Run generation units will recover their start-up costs under separate Must-Run agreements addressing specific Must-Run circumstances. Second, if the generating unit is not a Must-Run unit, it may include any start-up costs in its energy bid (e.g., through its cost-based incremental bid).

Under the redispatch program, GridSouth will maintain existing firm point-to-point and network transmission service for its OATT customers through the use of incremental and decremental bids that generation owners must submit (including Applicants) under their respective agreements with GridSouth. In addition, Load Serving Entities (LSEs) may submit bids voluntarily. According to Applicants, these bids will allow GridSouth to identify generation redispatch options to efficiently relieve the transmission congestion based on the information available to GridSouth. If GridSouth's redispatch options are insufficient to resolve the congestion, GridSouth may institute Transmission Line Relief (TLR) measures under NERC procedures.

GridSouth will buy incremental energy and sell decremental energy at cost-based rates unless a generation owner has obtained market-based pricing authority from the Commission that is specific to the congestion circumstances of GridSouth. The RTO will treat as confidential specific bids submitted by generation owners.

Applicants assert that the combination of buying incremental energy and selling decremental energy is likely to result in a net cost to GridSouth because the cost of purchasing the incremental energy most likely will exceed the proceeds that GridSouth receives from selling the decremental energy. Applicants propose that these costs be recovered from all firm transmission users (including Applicants on behalf of native load) on an impact-ratio share basis. This cost recovery approach is based on customer-specific impact factors that are developed from power system modeling that is representative of system conditions. A customer's share of the redispatch costs is the ratio of the customer's impact on the congested flowgate to the sum of all customer impacts for each hour during a month.

Applicants state that, under the voluntary redispatch program, GridSouth will facilitate redispatch arrangements between transmission customers and generation owners to accommodate transmission service requests for which sufficient ATC otherwise would not be available. GridSouth will facilitate such arrangements through information posted on its electronic customer interface and by allowing transmission customers and generation owners to post voluntary bids on that interface.

Applicants state that GridSouth will post information concerning likely congestion on each of its monitored flowgates on an ongoing basis. If GridSouth determines that there is no ATC, it will post information about distribution factors relative to the congested flowgates. transmission customers may use this information to arrange for a bilateral redispatch that would mitigate the congestion and be linked to a request for transmission service. GridSouth will evaluate "linked transactions" through its normal scheduling process. A linked transaction that is scheduled by GridSouth will be protected from curtailment by GridSouth up to the point of curtailing firm transmission service under the NERC TLR procedures.

According to the proposal, GridSouth will be authorized to designate a generating unit as a Must-Run unit if such a unit is required to ensure a secure and reliable transmission system under normal and first contingency conditions. The owner of any unit designated as Must-Run may use the dispute resolution provisions of the GridSouth OATT to dispute the designation as a Must-Run unit. GridSouth will have the authority to require such a unit to start-up, shut down, adjust its output level or alter a planned outage schedule.<sup>22</sup> Must-Run units will be compensated on a cost-basis in accordance with a separate agreement addressing specific Must-Run circumstances. Compliance with a GridSouth Must-Run instruction will not preclude the owners of such units from selling additional output in the market at market-based rates. GridSouth will recover its costs associated with its Must-Run instructions on a load-ratio basis from load within the particular control area where the local Must-Run condition occurs.<sup>23</sup>

Applicants claim that the initial approach is modeled after, and consistent with, the interim approach to congestion management proposed by the Alliance Companies, which the Commission found to be "an effective protocol for managing congestion" that complies with Order No. 2000.<sup>24</sup>

b. Procedures for establishing a market-based congestion plan

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<sup>22</sup>This is similar to the authority that GridSouth has over all generators, except for the rescheduling of planned maintenance outages, which is mandatory for Must-Run units, but voluntary for others.

<sup>23</sup>Wheeling-out and wheeling-through customers will not be charged for Must-Run costs.

<sup>24</sup>Alliance Companies, 94 FERC ¶ 61,070 at 61,314 (2001).

Applicants state that GridSouth will be responsible for developing and implementing a market-based approach to congestion management to replace the initial approach and the real-time balancing market within one year as required under Order No. 2000. Stakeholders in GridSouth's region, including Applicants, will participate in the development of the long-term congestion management approach and the real-time balancing market. Applicants propose that, in the event that GridSouth cannot meet this deadline despite its exercise of due diligence, GridSouth will file a detailed explanation why it could not meet the deadline, and a revised schedule for completion.

## 2. Comments and Protests

SMI Steel protests that the structure of the proposed redispatch program creates the opportunity for Applicants to profit at the expense of transmission customers. According to SMI Steel, generation owners, who are the Applicants themselves, will bid to provide incremental energy, and their bids will not be made public. It contends that, if the generation owners are granted market-based pricing authority, there would be no means to determine whether they are submitting unreasonably high bids. SMI Steel notes that, if GridSouth cannot recover what it spent for incremental energy through the sale of decremental energy, transmission customers will have to make up the difference.

SMI Steel asks that the Commission require Applicants to modify this aspect of the congestion management proposal to insure that generation owners will not have the opportunity to manipulate the market at the expense of transmission customers. It requests that the Commission make clear that any congestion management market developed by GridSouth must not function as a separate profit center for GridSouth or Applicants. SMI Steel also believes that Applicants should specify what reliability criteria will apply with regard to the GridSouth congestion management function. SMI Steel wants Applicants to change the term "ability" to "duty" in Section 1.1.2 of Attachment K to make clear GridSouth's affirmative responsibility to mitigate congestion when it occurs on the system. It also ask that Applicants specify the criteria that LSEs must meet if they wish to participate in the redispatch program.

Calpine asserts that the Commission should not tolerate Applicants' persistent attempts to delay the market efficiency benefits of an RTO. It requests that the Commission direct the GridSouth Board to file market-based load balancing and congestion management mechanisms within six months. To facilitate that process, Calpine requests that the Commission require GridSouth to activate the GridSouth Advisory Committee, and provide an explanation why existing market-based energy balancing and congestion management software and procedures that are in operation elsewhere cannot be adopted on a faster track.

Calpine also argues that Schedule 4 of the GridSouth OATT (addressing energy imbalance service) and Attachment K (addressing transmission system congestion management and must-run units) are in conflict and could force transmission customers to be charged twice for energy service. For example, Calpine states that when a load serving entity submits a balanced schedule and then actual

generation levels are less than scheduled levels because of transmission constraints, the load could be assessed both an imbalance charge (under Schedule 4) and a charge to recover redispatch costs (under Attachment K).

Calpine opposes Applicants' proposal to require merchant generation with existing market-based rate authority to secure 'special' market-based rate authority to sell energy for congestion management to GridSouth. It also claims that the interim congestion management system will not sufficiently compensate merchant generators. According to Calpine, the bidding mandate and maintenance restrictions and price terms of the energy call option also results in inadequate compensation. It requests that the Commission reject the restrictions and direct GridSouth to utilize its Advisory Committee process to resolve these issues. Similarly, Dynegy opposes Applicants proposal to require generators with existing market-based rate authority to obtain additional Commission approval to bid into the GridSouth congestion management market at rates other than cost-based. Dynegy argues that it is inappropriate for GridSouth to set or otherwise limit the generator's rates for service provided to GridSouth under its congestion management system. On the other hand, Joint Protesters ask that Applicants revise Attachment K-1 to clarify, consistent with the Transmittal Letter, that generation owners can not base congestion management bid prices on market-based rates unless and until they have demonstrated that they do not have market power with regard to relief of congestion in general and to specific flowgates which might be identified.

Calpine states that it does not understand how Applicants' proposal to allow multiple control areas to balance their own generation and supply while GridSouth operates its own independent congestion management redispatch can work effectively.

CUCA notes that section 11.2 of the congestion management plan requires each generator to make an "annual designation . . . of the costs components to be included in its formula rate for the upcoming calender year of GridSouth operation," and a generator will have an opportunity to change its cost component designation during the year only if GridSouth "changes the generator's status." CUCA comments that, given the recent volatility of fuel prices, generators need flexibility to redesignate the fuel cost component of their bids at least monthly.

Joint Protesters contend that the Sections 11.1.1 through 11.1.4 of Attachment K-1, which identify the allowable cost components for determining incremental and decremental bids, should be better defined to ensure consistency in cost-based pricing among generators. They claim that the definition of "fuel cost" as "... a unit's marginal fuel price multiplied by its incremental or decremental heat rate" requires further refinement because the phrase "marginal fuel price" could have several different meanings. Joint Protesters assert that the inclusion of fixed operation and maintenance costs as a component of allowable costs seems inconsistent with the concept of recovery of incremental or decremental costs, which by definition should be those costs which change as a result of the incremental or decremental output associated with a unit. Joint Protesters argue that inclusion of "other incremental operating costs" is broad enough to allow inappropriate expenses. They believe that Applicants should

specify what constitutes "variable operations and maintenance costs." In addition, Joint Protesters contend that the congestion management plan contains no process for verification that incremental and decremental bids are cost-based, and request that GridSouth be required to add the necessary provisions to provide for verification, including the audit of costs.

Joint Protesters argue that the proposed formula for recovering redispatch charges lacks specificity. Attachment K-3 of the OATT provides that "the monthly charge to a customer will be the sum of the customer's pro-rata share of GridSouth's costs for each flowgate, for each hour in which such costs were incurred during the month." Joint Protesters protest that the proposed analysis relies on computer modeling to estimate a customer's impact on a congested flowgate, and not actual data. They also note that, if control area operators are not required to submit operating schedules which become the basis for grid operations, then it is unclear what assumptions will be made with regard to the treatment of control-area-operator-owned resources relative to the resources of other transmission customers. Joint Protesters request that the Commission require GridSouth to expand the details and clarify the process whereby such customer-specific analyses will be made. Joint Protesters also believe that Attachment K, in whole, should be designated as being subject to the OATT Section 12 Dispute Resolution Procedures.

Joint Protesters state, that since Applicants' various filings have not addressed the existence and extent of any current congestion within the GridSouth area, no information is available to stakeholders and the Commission to demonstrate that cost shifting among transmission users will not occur when GridSouth starts operations. Joint Protesters believe that such effects should be considered in assessing the pricing for transmission services, including ancillary services, under the GridSouth OATT. They request that the Commission require Applicants to supplement their compliance filing with analyses that evaluate the level and significance of any existing congestion and anticipated congestion upon commercial operation of GridSouth. Similarly, Joint Protesters request that the Commission require GridSouth to disclose such information to allow an appropriate evaluation of the potential commercial effects of charges for must-run units, and that the Commission require that information pertaining to congestion and must-run units be filed before acting upon Applicants' proposal with regard to charges for congestion management and must-run units.

Joint Protesters state that the congestion management proposal has not been the product of any cooperative effort or collaborative discourse. They assert that Applicants' planned stakeholder process regarding congestion management and real-time balancing is wholly inadequate in light of Applicants' track record on stakeholder collaboration in the establishment of an RTO pursuant to Order No. 2000. Joint Protesters request that the Commission direct Applicants to establish a procedure whereby GridSouth will engage in an open, good-faith stakeholder negotiation process in an effort to reach consensus on a long-term plan for congestion management and a real-time balancing market. They believe that this process should commence after start-up of GridSouth and should be accomplished by the RTO in conjunction with the Stakeholder Advisory Committee.

Joint Protesters ask that, the Commission should direct Applicants to include in the process for developing a long-term, market-based approach to congestion management a requirement that GridSouth: (1) demonstrate that competitive generation markets exist and are compatible with the congestion management and real-time balancing market proposals for which approval is sought; (2) demonstrate that any proposed market-based approach to congestion management is not subject to market power exploitation due, among other things, to lack of competition with regard to congestion relief on specific flow paths; and (3) analyze the grid, identify existing and potential constrained paths, and address whether the proposed long-term approach to congestion management will be supported by competitive generation markets that would allow market-based pricing for congestion management.

SC Consumer Advocate comments that Applicants' proposed voluntary redispatch program reflects the need for transmission customers to negotiate individually with generation owners in GridSouth, who are also the transmission owners, for generation to deal with congestion of the transmission system. It contends that this is one of many ways in which GridSouth will not function as an integrated whole but, rather, is designed to allow the three transmission owners to retain as much control as possible.

### 3. Commission Conclusion

We will accept Applicants' interim congestion management proposal, with modifications. Order No. 2000 requires that each RTO have in place at the time of initial operation an effective protocol for managing congestion.<sup>25</sup> GridSouth Applicants have included an interim proposal for managing congestion, and as modified this meets the Order No. 2000 requirement for the first year of its operation.

Further, Order No. 2000 allows RTOs to take up to one year after start-up to implement market mechanisms for managing congestion.<sup>26</sup> OATT Attachment K, Section 4.3 provides that GridSouth will develop and implement a market-based approach to replace the interim proposal within one year, or file a detailed explanation if it is unable to meet the deadline. Consistent with Order No. 2000, Applicants must develop and implement their market-based plan within one year of start-up, and the option of filing a report to explain why it did not meet the deadline is unacceptable. Accordingly, Applicants must delete the last sentence of OATT Attachment K, Section 4.3. On the other hand, we will deny Calpine's request to advance the schedule established in Order No. 2000 by directing the GridSouth Board to file market-based load balancing and congestion mechanisms within six months. We wish to ensure that GridSouth has adequate time to develop a workable and efficient mechanism.

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<sup>25</sup>Order No. 2000, at 31,128.

<sup>26</sup>Id.

In developing the market-based approach, GridSouth, in collaboration with its stakeholders, should consider existing congestion management mechanisms employed by other grid operators in the industry. The mechanism ultimately proposed by GridSouth to replace the interim mechanism should either implement the best practices from among the existing mechanisms currently in use by other grid operators or explain why its proposal is superior to the industry's existing best practices. In response to concerns expressed by Joint Protesters, the mechanism should consider the potential for market power abuse, and if necessary, include market-oriented measures for mitigating market power.

SMI Steel is concerned that the proposed redispatch program creates the opportunity for profit for Applicants at the expense of transmission customers. It therefore requests that the Commission make clear that any congestion management market developed by GridSouth must not function as a separate profit center for GridSouth or Applicants. We acknowledge SMI's concern, in light of the fact that the procedures were prepared by Applicants, who are also the major generation owners in the area. We direct that the independent GridSouth Board review the congestion management procedures to ensure that they do not benefit Applicants unjustly at the expense of transmission customers. The Board should submit to the Commission any revisions to the procedures that it recommends or an affirmative statement that it does not recommend changes to the procedures.

In response to Interveners comments about cost-based versus market-based prices for congestion management, we will require the GridSouth Board to modify this aspect of their proposal. Of course, new market conditions and the potential for market power may arise when (as here) bid-based congestion markets are created; and we have required a fresh market power analysis prior to permitting market-based rates in bid-based markets operated by ISOs.<sup>27</sup>

Applicants' propose cost-based pricing for energy provided to relieve certain congestion until generators obtain additional market-based rate authority for that energy. However, their proposal inappropriately discriminates between types of redispatch service, imposing cost-based pricing for redispatch supporting existing firm transmission service but allowing market-based pricing for redispatch supporting other transmission service where ATC is not available. Applicants have not explained why the potential for market power and the need for cost-based limits on prices would be different for these two types of redispatch.

Moreover, Applicants have not justified their proposed type of cost-based prices. They do not propose traditional cost-of-service prices (which include a full allocation of fixed and variable costs); instead they propose incremental variable costs plus a percentage adder. Applicants do not explain why their proposal provides adequate compensation. Further, their proposal would result in different

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<sup>27</sup>See *Atlantic City Electric Company, et al.*, 86 FERC 61,248 (1999); *Central Hudson Gas & Electric Corporation, et al.*, 86 FERC 61,062 (1999); and *New England Power Pool*, 85 FERC 61,379 (1998).

compensation to different generators providing the same service, and Applicants have not explained why such differences in compensation are reasonable. Finally, we agree with Joint Protesters that the cost components proposed to be included in determining incremental cost are not defined with enough specificity to implement. We will require the independent GridSouth Board to revise this aspect of the proposal and provide adequate support for the revised proposal.

In response to Calpine's concerns about the conflict between Schedule 4 and Attachment K, we agree that the provisions of the two sections are not clearly spelled out and could result in double charging. We direct the GridSouth Board to revise these sections accordingly. At a minimum, the revised Schedule 4 should clarify that deviations from schedules that are directed by GridSouth (for example, for redispatch to relieve congestion) are not considered imbalances subject to imbalance charges.

We agree with Calpine that Applicants have not adequately explained how individual control areas and GridSouth will operationally coordinate their balancing and congestion management responsibilities. We direct the GridSouth Board to file a more complete explanation.

In response to Joint Protesters concerns about the method for recovering redispatch costs, we will require GridSouth to make available to affected parties the formulas and other information underlying its computer models in sufficient detail to allow the parties to verify their allocated costs. We disagree with Joint Protesters' criticism of the proposed use of computer modeling (rather than actual data) to assess a customer's impact on a congested flowgate. Since energy from all resources is commingled on the transmission grid, the impact of each transaction on particular flowgates cannot be determined solely from simple observation of raw data. Modeling is necessary to estimate the impact of each customer's transactions on a congested flowgate. However, it is reasonable for customers to have sufficient information about the model to verify their bills. GridSouth may require customers to sign appropriate confidentiality agreements, where required by software vendors.

We will deny Joint Protesters' request to require Applicants to file an analysis evaluating the level and significance of existing and anticipated congestion. Joint Protesters argue that such analyses are necessary to ensure that Applicants' proposal will not result in cost shifting. We disagree that such information is necessary to accept Applicants' proposal. We find that allocating congestion costs to customers in proportion to their flows on the congested flowgates, as proposed by Applicants, is reasonable.

We share SC Consumer Advocates' concern that, under the interim proposal, some transmission customers must negotiate individually with generation owners to deal with congestion. While we will accept this feature for the interim, it is inconsistent with the market-based congestion management mechanism that Order No. 2000 requires to be in place within one year of operation, because GridSouth (or another independent entity) is not operating a market mechanism to manage all congestion. Within one year of operation, GridSouth (or another independent entity) must employ such



a market mechanism. It will not be sufficient for transmission customers to be left to find ways on their own to redispatch generation when congestion arises.

F. Reliability Operating Agreements

1. Applicants' Proposal

Pursuant to section 205 of the FPA, Applicants submitted separate, unexecuted Reliability Operating Agreement (ROA) between GridSouth and each of the three Applicants, CP&L, Duke and SCE&G. According to Applicants, the ROA addresses two basic operational matters. First, the ROA provides for the various generation services necessary for the efficient and reliable operation of the transmission facilities subject to GridSouth's functional control and for GridSouth to provide transmission and ancillary services under the GridSouth OATT. Second, the ROA provides for each of three utilities to operate and manage their respective control areas subject to industry standards so as to enable GridSouth to perform its functions as Security Coordinator for the GridSouth region and coordinate the control areas consistent with the provisions of the GridSouth Operating Protocol.

Under the ROA, generator owners will establish, for each of their generating units, specific operating criteria that set out the ranges and limits for normal operations based on equipment ratings and limitations, as well as regulatory requirements imposed under codes or permits. In addition, generator owners will coordinate planned maintenance outages and develop with GridSouth procedures for responding to unplanned outages of the generating units and/or the transmission system. Applicants also state that the ROA requires CP&L, Duke and SCE&G to make available their generating units to: (i) provide services that enable GridSouth to provide transmission and ancillary services under the GridSouth OATT; (ii) provide for congestion management; and (iii) serve as Must-Run units if so designated in accordance with the Operating Protocol.<sup>28</sup> The ROA provides that CP&L, Duke, and SCE&G will comply with control area performance standards established and implemented by NERC and/or SERC. Applicants explain that compensation for these services will be in accordance with the provisions of the Transmission Operating Agreement and/or the OATT.

Applicants state that other generating entities that own or operate generating units at multiple locations within the GridSouth region may agree upon provisions in their interconnection agreements similar to those included in the ROA, or enter into new agreements similar to the ROA. The proposed

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<sup>28</sup>In addition, the ROA: (i) provides for the establishment of an Operating Committee; (ii) sets out procedures for unit commitment and dispatch; (iii) identifies the Points of Interconnection and delineates breaker and disconnect switch control; (iv) includes metering requirements; and (v) delineates the generator operators' obligations to meet agreed-upon voltage schedules at designated buses within the control area.

ROAs commence upon the date that GridSouth starts operations as an RTO and continues as long as each of the generator-owning parties owns the generating units subject to the ROAs.

## 2. Comments and Protests

Calpine claims that, since no independent GridSouth Board exists, the ROAs are just agreements between the Applicants. Calpine asserts that GridSouth should not be hamstrung at the outset by special operational restrictions and waivers for the original transmission owners in the region. It states that the rights and privileges Applicants provide themselves through the separate ROAs with GridSouth are superior to the provisions elsewhere in the OATT. Calpine believes that Applicants should not be the only beneficiaries of those superior terms, conditions, and assurances of compensatory rates. Calpine cites Section 5.2 of the ROAs, which provides that, if GridSouth requests an Applicant to provide a service for which no compensation is provided under the Operating Agreement, the Applicant and GridSouth will negotiate appropriate compensation for such services. Calpine claims that no similar opportunity is afforded to other generation providers.

Joint Protesters also claim that the ROAs are in no sense contracts that were negotiated at arm's-length between the parties. They assert that, in evaluating the ROAs, the Commission should bear in mind that the agreements are not the product of bilateral negotiations, but instead were developed unilaterally by one set of entities that would become parties to the ROAs.

Joint Protesters state that it appears that the ROAs have been drafted without any attempt to accommodate existing contracts that govern the operation of a number of generating units that presumably would fall under the ROA. For example, note that the Catawba Nuclear Station, while operated by Duke, is jointly owned by Duke and four other entities. Long-standing contracts in effect between Duke and each of the Catawba joint owners govern the operation of Catawba. According to Joint Protesters, the ROAs do not appear to take into account their impact on these existing arrangements. Joint Protesters request that the Commission require Applicants to meet with all affected joint owners of generation units that Applicants operate so that the joint owners may jointly identify any potential impacts on their unit ownership and power supply arrangements that may result from Applicants' execution of ROAs.

Joint Protesters note that the ROAs address responsibilities of each Applicant in its role as control area operator for its existing control area. They contend that the Commission should not approve such provisions if they would, in the future, hinder the consolidation of Applicants' three control areas into a single control area under GridSouth's control.

Joint Protesters claim that the relationship between the ROAs and interconnection agreements, executed pursuant to the GIPs, is unclear. They state that their concern is premised on the possibility that Applicants will apply to themselves through the ROAs operating or other requirements that are less burdensome than the requirements they impose on third-party generators under the proposed Facility

Interconnection and Operation Agreements. Joint Protesters assert that Applicants should not be permitted to use the ROAs as a vehicle to discriminate against third-party generators by applying stricter requirements to third-party generators than those that apply to Applicants.

Joint Protesters argue that Sections 2.1 and 12.5, which provide that disposition of a generator can trigger negotiations to revise the ROA, effectively create an escape clause for any Applicant that wishes to avoid continued performance under the ROA. According to Joint Protestors, Applicants should not have the unfettered ability to avoid continued performance under the ROA once it is made effective. They ask that the Commission require Applicants to eliminate the unilateral termination right contained in Section 2.1., and provide that, if negotiations between GridSouth and an Applicant are unsuccessful, the parties are required to submit to arbitration and/or make filings with the Commission for necessary modifications of the ROA.

Section 4.4 provides that Applicant will determine whether a new or acquired generating resource will be subject to the ROA. Joint Protestors protest that Applicants offer no explanation why they should be given such discretion, and contend that inclusion of new units under the ROA should be mandatory, not an option exercisable by each Applicant for its own strategic corporate reasons. They argue that, at a minimum, GridSouth and the Applicant should jointly decide whether a new or acquired generating resource is subject to the terms of the ROA.

Joint Protesters claim that the reference in Section 5.1 to the "[Applicant] Control Area" should be deleted because GridSouth's entitlement to obtain generation services from an Applicant should encompass whatever service is required to support transmission system operations anywhere in the GridSouth region. They assert that Section 5.2 has a similar problem. Additionally, Joint Protesters protest that Section 5.2, which addresses the procedures under which GridSouth will obtain "Interconnected Operations Services," provides that "the Parties shall negotiate appropriate compensation provisions for such services." They assert that Section 5.2 must be modified to recognize that any such compensation is subject to the Commission's rules and regulations, including the requirements applicable to the assessment of market-based rates.

Joint Protesters assert that the provision in Section 5.4.1 that GridSouth compensate an Applicant for opportunity costs and cascading impacts on other planned maintenance outages is open ended and subject to potential abuse. They also argue that GridSouth has no economic incentive to audit or verify an Applicant's claimed costs and, therefore, the provision should be stricken. Alternatively, they propose that the language be modified to state that "GridSouth agrees to compensate [Applicant] for all reasonably incurred and verified costs."

Joint Protesters contend that Section 7.3 should be expanded to clarify that the specified services will be provided pursuant to the Transmission Service Agreement that the Commission has instructed each Applicant to execute with GridSouth. They argue that Section 7.7.2, relating to

inaccurate meters, must be strengthened by deleting the phrase “make reasonable efforts to” and requiring ADR procedures if the parties cannot agree on the needed modification.

Section 7.10 calls for GridSouth to periodically establish reasonable voltage schedules to be maintained at specified busses within an Applicant’s control area. Joint Protesters claim that Applicants’ unilateral discretion as to whether voltage schedules will be satisfied on a “Generating Station or area basis” requires clarification. They claim that it is unclear, for example, whether this provision is intended to give Applicants the right to argue that they have satisfied a voltage schedule because all Generating Stations within their control area, when viewed in the aggregate, have met the specified voltage requirements. Joint Protesters state that if that is the intent, Applicants should provide similar discretion to other generation-owning entities or strike the provision because it is discriminatory.

Joint Protesters assert that Section 11.3, which relates to GridSouth’s treatment of confidential information, should be revised to conform to Commission precedent governing the treatment of confidential information. Further, Section 12.4 provides that the terms of the ROA prevail when inconsistent with the Operating Protocol or Planning Protocol. Joint Protestors do not believe that the ROA should trump provisions of the OATT, and that the provision should be revised to reverse the priority.

### 3. Commission Conclusion

We agree with Calpine and Joint Protesters that, given that an independent GridSouth Board of Directors is not in place, the ROAs do not reflect the independence from market participants needed for compliance with Order No. 2000. As a result, GridSouth’s ROAs are premature. In light of the numerous issues raised by intervenors regarding the ROAs, and the link between the ROAs and the congestion management system in GridSouth, we direct GridSouth to renegotiate the terms of the ROAs with the GridSouth Applicants once the independent GridSouth Board of Directors has been installed.

During those negotiations, the parties should consider the issues raised by Calpine and Joint Protestors. While we have not at this time determined the merits of intervenors’ comments, for the benefit of our review, when GridSouth submits the renegotiated ROAs, the filing should address these issues, i.e., identify whether the ROA was revised in light of the issues raised by intervenors or provide an explanation why it believes such revisions are not necessary.

## G. Revisions to the OATT, Operating Agreement and LLC Agreement

### 1. OATT

#### a. Applicants’ Revisions

Applicants revised their Market Monitoring Protocol to comply with PJM Interconnection, LLC, 93 FERC ¶ 61,269 at 61,868-69 (2000). They revised the Operating Protocol so that disputes involving ATC calculations shall be immediately addressed by the Operational Planning Committee. If the Operational Planning Committee does not resolve the matter, it will be handled pursuant to the dispute resolution procedures of the GridSouth OATT.

The March 14 Order directed Applicants to delete from Section 1.4 of the Planning Protocol “only in the event that studies determine that such facilities will have a detrimental effect on grid reliability or will have an adverse impact which exceeds the benefits produced by the planned facilities.” Applicants deleted this language and replaced it with the following: “unless GridSouth identifies an equally efficient, alternative means of causing the transmission project to be constructed that satisfies the reasonable service needs of the affected Transmission Owner’s Native Load Customers and does not adversely affect such Transmission Owner’s other facilities.” Applicants also revised other provisions of the Planning Protocol as required by the March 14 Order.

Applicants state that they also made certain other minor modifications to the GridSouth OATT in compliance with the March 14 Order. As required in the Order, the definition of “Transmission Owner” in Section 1.91 has been modified to remove any reference to reciprocity tariffs. Section 12.5 of the GridSouth OATT has been modified to reflect the complaint provisions contained in the pro forma OATT. Section 24.3 has been modified to make clear that Operating Agreement Participants will be subject to GridSouth’s power factor requirements in the same fashion as will be other Transmission Customers. Finally, Attachment C has been modified to explain how GridSouth will include CBM in its ATC calculations. Applicants state that while the revisions to Attachment C comply with the March 14 Order, there may be additional revisions that could be addressed in a future filing.

As directed by the Order on Rehearing, Applicants revised Section 28.3 of the OATT to provide that network service customers will execute a single agreement which can contain information for each delivery zone.<sup>29</sup>

b. Comments and Protests

Joint Protestors point out that Applicants did not modify the definition of “Load Serving Entities” so that generation and transmission cooperatives and joint municipal agencies are clearly included within the definition as agreed to by GridSouth in its answer filed on December 5, 2000 in Docket No. RT01-74-000. They point out that Section 12.5 of GridSouth’s OATT contains a typographical error.

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<sup>29</sup>95 FERC at 61,992. Applicants filed the revised pro forma tariff sheet on June 11, 2001, in Docket No. RT01-74-003.

Joint Protesters assert that the Commission required Applicants to make changes to Section 34 of the OATT to incorporate, as necessary, arrangements for Operating Agreement Participants to compensate GridSouth for their use of transmission facilities. They state that Applicants neither revised Section 34 nor explained why the modifications are unnecessary. Joint Protesters request that the Commission direct Applicants to make the necessary changes or explain why they are not needed.

Joint Protesters state that the March 14 Order directed Applicants to state whether GridSouth will include a Capacity Benefit Margin (CBM) in its calculation of ATC, and, if so, explain how it will calculate CBM. They protest that Applicants propose, in response to this directive, that GridSouth will simply act as an aggregator of CBM nominations submitted by the individual LSEs. Further, Joint Protesters complain that the proposed language fails to specify the criteria that GridSouth will apply in assessing whether the CBM nominations submitted by the LSEs are unreasonable or disproportionate. They also assert that the proposed revision does not indicate who will determine the Transmission Reliability Margin (TRM) and how that calculation will be made.

Joint Protesters contend that GridSouth itself, not the LSEs, should determine the CBM (if any) that is necessary to maintain reliable operations and the criteria that GridSouth will apply in evaluating CBM nominations should be specified. They believe that GridSouth should determine any value that directly affects ATC or, at a minimum, be subject to GridSouth's review and modification based on specifically stated criteria. Joint Protestors also note that Applicants failed to include their procedure for verifying the equipment ratings the transmission owners provide for use in ATC calculations as directed by the March 14 order.

Joint Protestors point out that Applicants failed to delete the sentence "Transmission owners will continue to be responsible for planning their systems to serve their native load customers" in Section 3.1 of the Planning Protocol as directed by the Commission. Rather, Applicants modified the sentence to provide that "transmission owners will continue to plan their systems to serve their native load customers; provided however, that all transmission planning, whether to serve Native Load Customers or other load, will be under the ultimate authority of GridSouth." Joint Protestors claim that the modified language in Section 3.1 would put GridSouth in the role of a reviewer of plans prepared by the transmission owners, instead of endowing it with principal responsibility for, and control over, the transmission planning process. They request that the Commission reject the proposed language which they believe reduces GridSouth to a secondary role in the planning of the regional grid.

c. Commission Conclusion

We agree that Applicants failed to make all the revisions directed by the March 14 order. Therefore, we direct the Applicants to revise Section 1.42 as required by the March 14 Order and correct the typographical error in Section 12.5. In addition, to the extent that Applicants agreed in their pleading to make specific modifications, they are directed to do so.

Regarding the proposed language in Section 3.1 of the Planning Protocol, we agree with Joint Protesters that GridSouth must be the entity with principal responsibility for and control over the transmission planning process. Our March 14th Order required GridSouth to remove the referenced sentence because GridSouth will be the sole transmission provider in the region and, as a result, would be the entity that is responsible for transmission planning. Accordingly, the proposed revised language is rejected and GridSouth should comport with our directive in the March 14 order and delete the sentence altogether from Section 3.1. Likewise, Applicants must delete the proposed revision to section 1.4 of the Planning Protocol as beyond the directive of our March 14 order. Applicants must also delete the proposed modifications to Section 2.8 of the Planning Protocol and Section 2.08(b) of the Operating Agreement as directed in the Order on Rehearing.<sup>30</sup>

GridSouth is the operator of the grid and thus it must have responsibility to decide whether to set aside capacity for reliability margins. Once in place, the GridSouth Board must revise the compliance filing to reflect that GridSouth will determine the CBM (if any) that is necessary to maintain reliable operations. The GridSouth Board should also specify the criteria that GridSouth will apply in evaluating CBM nominations.

## 2. LLC Agreement

### a. Section 4.3, Separately Incurred Start-up Costs

In addition to the revisions required by the March 14 order, Applicants have made other changes to the LLC Agreement, many of which relate to the initial funding of GridSouth by the Members. Once such addition, Section 4.3, provides that:

Prior to the Independence Date, the Company [i.e., GridSouth] will determine whether certain costs incurred by a Member are Start-Up Costs. If the Company determines that they are Start-Up Costs: (i) such Member shall, to the extent reasonably practical, assign all of its rights and obligations under any contract or agreement related to such Start-Up Costs to the Company, (ii) thirty percent (30%) of the amount of such Start-Up Costs shall be deemed Capital Contribution to the Company by such Member, and (iii) seventy percent (70%) of the amount of such Start-Up Costs shall be deemed advance to the Company by such Member under such Member's Convertible Note; provided, however, any failure to cause a transfer pursuant to subparagraph (i) hereof shall have no effect on the provisions of subparagraphs (ii) and (iii) hereof.

Joint Protestors contend that, because GridSouth will presumably seek recovery of start-up costs in its cost-of-services-based rates, these costs should be scrutinized at the outset to ensure that

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<sup>30</sup>95 FERC ¶ 61,282 at 61,996.

only prudent and reasonable costs are credited to the Member. Joint Protestors request that the independent auditor who will conduct independence audits also be directed to review the Members' proposed start-up costs for reasonableness and prudence. Further, they object to the final clause of Section 4.3 because it effectively negates the requirement that Members assign to GridSouth rights and obligations under contracts related to start-up costs.

We deny Joint Protestors' request that we direct an independent auditor to analyze the prudence of the GridSouth Members' proposed start-up costs. The time for such scrutiny occurs when GridSouth seeks recovery of start-up costs pursuant to section 205 of the FPA.<sup>31</sup> However, we agree with Joint Protestors that the final clause of Section 4.3 should be eliminated. This language would allow a Member to have start-up costs credited to its benefit, even if it chose not to assign to GridSouth the rights under the associated contract or agreement. Applicants have provided no explanation why this clause is needed, and it appears to deny GridSouth benefits for which it has paid. Accordingly, we direct GridSouth to revise Section 4.3 by deleting the phrase beginning with "provided, however . . ." to the end of the paragraph.<sup>32</sup>

b. Section 4.4(b)(ii), Premium Payment

The March 14 order directed Applicants to eliminate language that would set in advance a fixed, 10% premium for additional members to pay for an acquisition of an interest in the GridSouth LLC and, instead, add language that would allow the GridSouth Board and interested parties to negotiate a proper premium based on their respective corporate needs.<sup>33</sup> In response, Applicants deleted the 10% premium requirement and added a new Section 4.4(b)(ii), which provides that an Additional Member that joins the LLC during the "open window period" (October 16, 2000 to the Independence Date) must pay - in addition to its percentage interest of capital contribution and advances under convertible notes - "an amount agreed upon, if any, by such Additional Member and all of the then existing Members in order to compensate such Members for a return on prudently incurred Start-Up Costs (the "Premium Payment")."

Joint Protestors argue that Section 4.4(b)(ii) does not comply with the Commission's directive because potential new Members will negotiate the premium with existing Members, and not with the

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<sup>31</sup>See *Duke Energy Corporation*, 94 FERC ¶ 61,080 (2001) (accepting proposed accounting treatment for GridSouth start-up costs, and emphasizing that recovery of start-up costs requires a section 205 filing prior to recovery).

<sup>32</sup>Applicants' proposed additional changes to the LLC Agreement (that are in addition to those directed previously by the Commission) are accepted unless specific revisions are required by this order.

<sup>33</sup>March 14 order, 94 FERC at 62,014.



GridSouth Board as required by the March 14 order. They contend that this creates the potential for abuse because existing Members would likely hold the upper hand in such negotiations. Joint Protestors ask that the Commission direct Applicants to delete the provision in its entirety or, at a minimum, require them to specify that the GridSouth Board will be the negotiating partner.

In an order to be issued concurrently, we direct that the participants in this and other RTO proceedings participate in discussions with a mediator. We do not wish to tie the hands of the participants in those discussions and therefore leave it to the participants to discuss this issue in those talks. However, as a general proposition, and as indicated in the March 14 order, the negotiation of this type of premium should be negotiated by the independent RTO Board, not the founding members.

c. Sections 6.1(b), Board of Directors

Section 6.1(b) of the LLC Agreement was revised to state that "at least one of the members of the initial Board shall have experience in the public power sector of the electricity industry." Joint Protestors contend that the Commission should direct Applicants to delete the word "initial," so that the provision will apply on an ongoing basis. Further, they note that Applicants state in the Transmittal Letter that one Board Member will have experience in the non-profit sector, and ask that this phrase be inserted so as not to exclude those with experience with rural electric cooperatives, which are non-profit, but not publicly owned. Joint Protestors also ask that Section 6.2 (Number of Directors) be revised to reflect that, if the seven-member Board is downsized at least one member will have non-profit experience, and if the Board's number increases a proportional number of the Board should have such experience.

Applicants now propose, without explanation, to limit their previous commitment - that one member of the Board will have experience in the public power sector of the industry<sup>34</sup> - by having the provision apply only to the initial Board. Further, it appears that the terms "non-profit" and "public power" have inadvertently been used interchangeably. Thus, we direct GridSouth to revise Section 6.1(b) to reflect that "at least one member of the Board will have experience in the non-profit sector . . ." We will not require any revision to Section 6.2. However, reading Section 6.2 together with Section 6.1(b) as modified by this order, if GridSouth downsizes the Board, it cannot eliminate the seat for a Board member with non-profit experience.

d. Section 6.13(b)(i), GridSouth acquisition of non-transmission assets

Pursuant to Section 6.13(b)(i), GridSouth's passive owners retain the right to veto the Board's decision to "acquire (whether by purchase, merger, or otherwise) all or substantially all of the

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<sup>34</sup>See October 16, 2000 Transmittal Letter at 22.

capital stock or other equity interests of any Person or acquire . . . assets of any Person . . ." with certain specific exceptions.

Joint Protestors argue that the provision appears to give the passive owners veto power over corporate expansions in the Southeast to extend the platform of the GridSouth RTO. They contend that the March 14 order directed modification of a similar provision, Section 6.13(b)(iv), which gave GridSouth Members a veto right over the Board's decision to merge or consolidate with another entity.<sup>35</sup> The March 14 order directed Applicants to revise Section 6.13(b)(iv) to provide that a Member that is dissatisfied with the Board decision must come to the Commission and affirmatively demonstrate that the proposed merger or consolidation would adversely impact the integrity of its investment.<sup>36</sup> The Joint Protestors ask that the Commission direct the Applicants to revise section 6.13(b)(i) in a similar manner.

We agree that this provision could provide the passive owners with a veto power over expansions that involve the acquisition of securities or equity interests in other entities. Accordingly, we direct that the GridSouth Board revise Section 6.13(b)(i) consistent with our direction in the March 14 order, that a passive owner that is dissatisfied with the Board decision must come to the Commission and affirmatively demonstrate that the proposed acquisition would adversely impact the integrity of its investment.

e. Section 6.14, Directors, Officers and Employees

Applicants' initial filing provided that each GridSouth Director, Officer, agent or employee must dispose of securities in any Member or Market Participant within six months of the time of his affiliation or employment with GridSouth.<sup>37</sup> In their May 14, 2001 filing, Applicants propose revisions to Section 6.14 of the LLC Agreement to provide that, for Directors, Officers and employee hired prior to the GridSouth Independence Date, the six-month period for disposition of securities commences on the effective date of the GridSouth OATT. A similar change is made to the definition of "independent person" in the GridSouth Master Definition List.

Joint Protestors argue that the proposed changes should be rejected. They note that if GridSouth commences operation on the target date of December 15, 2001, current Directors, Officers and employees of GridSouth could retain securities in Members and Market Participants for over a

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<sup>35</sup>March 14 order, 94 FERC at 61,986.

<sup>36</sup>In response, Applicants deleted Section 6.13(b)(iv) and included a new Section 4.6(i), which reflects the Commission's direction.

<sup>37</sup>LLC Agreement, Schedule E (Standards of Conduct), Paragraph II.E.1-3.

year. They contend that important decisions about the RTO are being made prior to the Independence Date, and those decisions should be made by fully independent directors and officers.

We deny Joint Protestors' protest. In *Central Hudson Gas & Electric Corporation, et al.*, 83 FERC ¶ 61,352 at 62,410 (1998), we accepted a similar provision that required divestiture within six months of the effective date of the ISO Tariff. Applicants' proposal is consistent with this precedent.

f. Section 6.21(a), Agreements with affiliates

The March 14 order directed Applicants to revise Section 6.21(a) to state that GridSouth will use competitive bidding when seeking to procure goods and services from members or market participants.<sup>38</sup> In response, they modified the provision to state that GridSouth will use competitive bidding when seeking to enter into a contract that requires aggregate payments of \$50,000 or more. Joint Protestors request that the Commission reject the \$50,000 limitation, which was not mentioned in the prior Commission order.

While we believe that the proposed \$50,000 limitation is too high a threshold, we will allow GridSouth to file a revised provision that sets a \$20,000 bid limitation. Further, to assure that this limitation is not misused, the GridSouth Board should revise the provision to state that GridSouth will use competitive bidding when seeking to enter into a contract that requires aggregate payments of \$20,000 or more per Member or Market Participant each year. Also, such contracts should be reviewed during the mandatory independence audit.

g. Article XI, Conflicts of interest

Article XI of the LLC Agreement states that no director, officer, agent or employee may simultaneously be a director, officer or agent of any Member or Market Participant. As noted by Joint Protestors, this provision does not prohibit GridSouth personnel from simultaneously being an employee of a Member or Market Participant. GridSouth should revise Article XI to correct this apparent oversight. However, we reject Joint Protestors claim that Article XI is insufficient to ensure independence of the RTO because it allows directors and officers to move directly from a Member or Market Participant to GridSouth. Consistent with Commission policy, GridSouth may hire former employees of transmission owners or market participants provided that they satisfy the independence standards in Applicants' filing, as modified by this order.<sup>39</sup>

3. Operating Agreement

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<sup>38</sup>March 14 order, 94 FERC at 61,990.

<sup>39</sup>E.g., *GridFlorida LLC*, 94 FERC ¶ 61,020 at 61,049 (2001).

The March 14 order directed Applicants to modify the Operating Agreement to reflect that compensation for Operating Agreement Participants by GridSouth must be accomplished by contract, and not by waiver.<sup>40</sup> In response, Applicants revised section 2.09(d) of the Operating Agreement to state that "prior to Rate Unbundling in a jurisdiction of a Participants' Service Territory, GridSouth shall provide, subject to the terms and conditions of the OATT, and subject to a service agreement between GridSouth and each Participant, Transmission Service as necessary for each Participant to provide bundled retail electric service in such jurisdiction."

Joint Protestors object that Applicants failed to provide a pro forma service agreement in the May 14 Compliance Filing, and request that the Commission instruct Applicants to provide such an Agreement immediately. Further, they protest that Applicants failed to revise the last provision of Section 2.09(d), which states that, after rate unbundling occurs in a participants' jurisdiction, "the unbundled transmission component of retail service in that jurisdiction shall be subject to the OATT and treated in the manner set forth above for wholesale services." They argue this provision conflicts with the statement of the March 14 order that Operating Agreement participants place the transmission component of their retail service under the GridSouth OATT at the time they begin to take transmission service from the RTO.

We will not require Applicants to submit a pro forma service agreement at this time as requested by Joint Protestors. Rather, consistent with our conclusion regarding the ROAs, the independent GridSouth Board should be responsible for preparing and filing this document. However, we agree that the last passage of section 2.09(d) is inconsistent with the March 14 order as well as the order on rehearing (or, at best, unnecessarily repetitive) and therefore must be deleted.<sup>41</sup>

Calpine's protest regarding sections 2.06(b), 2.09(a)(iii) and 2.10(a)(i) of the Operating Agreement do not relate to the compliance filing and therefore are outside the scope of the current proceeding. Rather, the issues raised by Calpine relate to provisions of the Operating Agreement that Applicants submitted in the original October 16, 2000 filing, and have not been subsequently revised. We have explained in numerous orders that we will not consider arguments raised in a compliance proceeding that are not responsive to the question of whether the compliance filing satisfies the directives of the Commission in an earlier order.<sup>42</sup>

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<sup>40</sup>March 14 order, 94 FERC at 61,999.

<sup>41</sup>March 14 order, 94 FERC at 61,999, on rehearing, 95 FERC at 61,991.

<sup>42</sup>E.g., Wisconsin Public Service Corporation, 81 FERC ¶ 61,072 at 61,303 (1997). Likewise, SMI Steel's protest regarding the eligibility of interruptible loads to participate in the ancillary services markets and the time line for GridSouth to submit a real-time balancing market proposal are beyond the scope of this proceeding.

The Commission orders:

(A) Applicants' compliance filing Docket No. RT01-74-002 is hereby accepted as discussed in the body of this order

(B) The GridSouth Board is hereby directed to submit within ninety (90) days of the issuance of this order revisions to the GridSouth Open Access Transmission Tariff, GridSouth Transmission Operating Agreement, and Limited Liability Company Agreement of GridSouth Transco, LLC, as discussed in the body of this order.

(C) Applicants proposed Reliability Operating Agreements are hereby rejected, as discussed in the body of this order.

(D) Applicants' filing in Docket No. RT01-74-003 is hereby accepted, as discussed in the body of this order.

By the Commission. Commissioner Breathitt dissented in part with a separate statement attached.

( S E A L )

David P. Boergers,  
Secretary.

APPENDIX A

Alcoa Power Generating Inc. (Alcoa)  
American Forest and Paper Association (AF&PA)  
Calpine Eastern (Calpine)  
Carolina Utility Customers Association (CUCA)  
Dynergy, Inc. (Dynergy)  
ElectriCities of North Carolina, Inc., North Carolina Electric Membership Corporation, New  
Horizon Electric Cooperative, Inc., Piedmont Municipal Power Agency, and the Cities of  
Orangeburg and Seneca, SC (Joint Protestors)  
SMI Steel-South Carolina, a division of Commercial Metals Company (SMI)

APPENDIX B

Calpine

Carolina Municipal Entities (ElectriCities of North Carolina, Inc., Piedmont Municipal Power Agency,  
and the Cities of Orangeburg and Seneca, South Carolina)

Central Electric Power Cooperative, Inc. (Central)

Consumer Advocate for the State of South Carolina (SC Consumer Advocate)

GridSouth Applicants

New Horizon Electric Cooperative, Inc. (NHEC)

North Carolina Electric Membership Corporation (NCEMC)

South Carolina Public Service Authority (Santee Cooper)

## APPENDIX C

Alcoa

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

GridSouth Transco, LLC, et al.

Docket No. RT01-74-002 and  
RT01-74-003

(Issued July 12, 2001)

Breathitt, Commissioner, dissenting, in part:

Since the Commission began promoting RTOs as a means to remove barriers and impediments to wholesale electricity markets, I have been fully committed to the goal of implementing RTOs. However, I am dissenting, in part, to express my objections to specific language in this order and other RTO orders on today's agenda supporting the creation of four RTOs in the country. I agree with the majority's claim that the Commission has been attempting to facilitate the development of large RTOs reflecting natural markets since we issued Order No. 2000. That was our stated goal and one that I have actively pursued. However, today's orders go further by stating that the Commission "favors the development of one RTO for the Northeast, one RTO for the Midwest, one RTO for the Southeast, and one RTO for the West." I do not necessarily favor such development.

When the Commission deliberated over how to attain our mutual objective of RTO formation, we decided to adopt an open collaborative process that relied on voluntary regional participation. The intent was to design RTOs so that they could be tailored to the specific needs of each region. We specifically declined to propose fixed or specific regional boundaries under section 202(a) of the FPA. Instead, we concluded, as a matter of policy, that we would not attempt to draw boundaries, based upon our conviction that transmission owners, market participants, and regulators in a particular region have a better understanding of the dynamics of the transmission system in that region, and that they should propose the appropriate scope and regional configuration of an RTO. We did not specifically endorse one particular scheme of RTO configuration, but opted instead to establish appropriate guidelines to aid in RTO development. In fact, our regulation requires only that an appropriate region is one of sufficient scope and configuration to permit an RTO to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.

Today's order represents a dramatic departure from the approach we pursued in Order No. 2000 to the extent that it directs the formation of four specific RTOs. Just as some commenters to our RTO rulemaking feared, the Magic Markers have come out, and the boundaries are being drawn with little regard to the status and timing of RTO formation efforts in various regions of the country. This was not my intent at the time we issued Order No. 2000; and the events since we issued Order No. 2000 do not compel me to embrace this policy shift. Parties have spent many hours and countless resources in negotiations, collaborations, and complicated business strategy sessions to develop reasonable RTO approaches. The impact of the majority's directive that these four RTOs be formed could be to render these efforts useless and force parties to begin the difficult and time-consuming process anew. For example, the Midwest ISO -Alliance settlement, which the Commission approved and which represented a tremendous effort by many parties, could unravel.

If the majority believes that the Commission should depart from the basic philosophies embodied in Order No. 2000, then I believe it would be only appropriate to initiate a formal notice-and-comment rulemaking proceeding so that we could make a reasoned decision informed by the views of the stakeholders in this process – state commissions, chief among others.

Finally, I do not adopt the majority's assertion that forming larger RTOs will result in lower wholesale electricity prices. This is a laudable goal, and as such, I embrace it. As a general proposition, Order No. 2000 encouraged the development of large RTOs. However, the promise of lower wholesale electricity prices is one that I, as a federal official, am not willing to make to consumers at this time.

For these reasons, I respectfully dissent.

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Linda K. Breathitt  
Commissioner